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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/410,484	09/30/99	WADSTEIN	J NATNUT-03972

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HM22/0220

EXAMINER

NGUYEN, H

ART UNIT	PAPER NUMBER
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1617

DATE MAILED:

02/20/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

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<b>Office Action Summary</b>	<b>Applicati n No.</b> 09/410,484	<b>Applicant(s)</b> WADSTEIN ET AL.	
	<b>Examiner</b> Helen Nguyen	<b>Art Unit</b> 1617	
	- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -		

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☒ Responsive to communication(s) filed on 17 January 2001.

2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-18 is/are pending in the application.

4a) Of the above claim(s) 4-6, 8, and 10-18 is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-3, 7 and 9 is/are rejected.

7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.

8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some \* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

15) <input type="checkbox"/> Notice of References Cited (PTO-892)	18) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
16) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	19) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
17) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5</u> .	20) <input type="checkbox"/> Other: _____

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### DETAILED ACTION

Applicant's election with traverse of a treatment of hypertension with cis-9, trans-11-linoleic acid, in Paper No. 6 is acknowledged. The traversal is on the ground(s) that the Examiner has not shown that the species have a separate status in the art. This is not found persuasive because there is no such requirement for an election of species (lines 9-14 on page 3, and lines 20 on page 6 bridging page 7, lines 1-2, concerning restrictions rather than elections of species, were mistakenly included in the action). To overcome the restriction, Applicants may state on the record that the species are equivalent.

The requirement is still deemed proper and is therefore made FINAL.

This application claims priority to a US provisional application, serial no. 60/104,032, filed on October 03, 1998.

Claims 1-3, 7 and 9 are presented for examination.

### Claim rejection

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Appl.  
has  
response  
But  
not ans.

In claim 9, Applicants left out the measurement unit for the lower ranges of 0.1.

Do Applicants intend "pg" or "ng" or "µg" or "mg" or "g"?

to which unit →  
objection &  
maintain this  
cl. 9 indefinite.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Langer, and Udell (See IDS of Jan. 24, 2000).

Langer teaches a method to reduce blood pressure by losing weight. See Langer, Clinical and exper. Hypertension, (See IDS of Jan. 24, 2000), page 1132, lines 8-10.

Udell teaches and sells CLA (conjugated linoleic acid), including the cis-9, trans-11 isomer of octadecadienoic acid, for weight loss. (See IDS of Jan. 24, 2000), See the entire document.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use CLA in the method of reducing blood pressure by losing weight of Langer to achieve the beneficial effect of weight loss by taking CLA in view of Udell.

As to claim 9, It is well known in the art to determine the appropriate intake dosing by monitoring blood pressure, and body weight individually in order to achieve the treatment of hypertension.

No claims are allowed.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen Nguyen whose telephone number is (703) 605-1198. The examiner can normally be reached on M-F (9:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie can be reached on (703) 308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 305-3592 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Helen Nguyen  
Patent Examiner

February 14, 2001

EDWARD J. WERMAN  
PRIMARY EXAMINER